



PLANNING COMMISSION

Department of Urban Planning & Design • P.O. Box 27210 • Tucson, AZ 85726-7210

DATE: August 2, 2006

TO: Planning Commission

FROM: Albert Elias AICP, Executive Secretary

SUBJECT: Land Use Code Amendment – C-1 Zone Food Service & Spirituous Liquor

Issue: This item is scheduled tonight as a public hearing before the Planning Commission in a study session. The Mayor and Council have directed staff to bring forward an amendment to the *Land Use Code (LUC)* that will eliminate conflicts between the *LUC* and Title 4 of the Arizona Revised Statute (A.R.S.) regarding restaurants with liquor licenses.

Recommendation: - Staff recommends that the Planning Commission forward this item to the Mayor and Council with a recommendation to adopt the *LUC* amendment.

Background: - In February 2006, a Zoning Examiner decision was appealed to the Mayor and Council because of conflicts between the *Land Use Code* and Arizona State Statutes regulating restaurants that serve alcohol. State law preempts the *LUC*: 1) the hours that food is served in establishments licensed to serve alcoholic beverages, 2) the definition of restaurant and, 3) the types of alcoholic beverages that may be served in such establishments. The Mayor and Council have directed staff to prepare an amendment that will align the *LUC* with Title 4 of the Arizona Revised Statutes. A copy of the statute is attached for reference.

A.R.S. §4-224, Local ordinances: prohibitions states:

A city, town or county shall not adopt ordinances or regulations in conflict with the provisions of this Title including, but not limited to, ordinances or regulations pertaining to hours and days of liquor sales and ordinances or regulations that conflict with the definition of ("Restaurant") contained in this Title.

During the July 19, 2006 study session, the Planning Commission discussed the proposed amendment and questioned whether an amendment affecting the hours of operation would require all restaurants to remain open until ten o'clock (10:00 p.m.). Staff explained that the amendment proposed adds the text "**or** until ten o'clock (10:00) p.m." and therefore will not require all restaurants serving alcohol to remain open until 10:00 p.m. The Commission also asked how the proposed amendment would impact restaurants. Staff explained that the amendment would require restaurants serving alcohol to maintain compliance with state law including the requirement that at least forty percent of the establishments gross revenue is from the sale of food.

Amendment: - A copy of the amendment proposed is provided as Attachment A. The proposed amendment consists of the items summarized below.

1. Modify the Performance Criteria required for Food Service in Section 3.5.4.7 A. and in the definition, Section 6.2.18 B. to include the hours of food service operation consistent with State statutes.
2. Modify the LUC definition of restaurant in Section 6.2.18 to be consistent with the definition provided in state statute.
3. Eliminate the reference in Section 3.5.4.7 D. and E. concerning the types of alcoholic beverages that may be served by an establishment with alcoholic beverage services.
4. Eliminate the Special Exception process in Section 2.5.3.3 A. required for alcoholic beverage services that are secondary uses to food service in the C-1 zone. The Mayor and Council discussed this particular item at length in the February appeal. A copy of the Mayor and Council Administrative Action Report is included as Attachment B.

The sections of the statutes and the existing sections of the LUC that conflict are indicated below in bold text. Please refer to Attachment A to reference the proposed changes to the LUC.

Hours of Restaurant Service:

Ariz. Admin. Code R19-1-208 - Hotel/Motel/Restaurant Requirements

A Hotel/Motel licensee and a Restaurant licensee must maintain complete restaurant services as defined under A.R.S. §§ 4-205.01, and 4-205.02, continually during the hours of selling and serving spirituous liquors. **Restaurant services, as defined under these statutes, is compulsory to 10 p.m. daily if any spirituous liquors are to be sold and served to the legal hours.** A requested meal which is refused during these hours will constitute sufficient evidence that the licensed business has ceased to operate as a bona fide restaurant.

LUC art. VI, § 6.2.18 B. - The **full kitchen remains open and meals are available to patrons during all hours of operation with the exception of the last hour which is used for cleanup.** [Note: It must state the restaurant with liquor sales must be open until at least 10:00 p.m.]

LUC art. III, §3.5.4.7 A. - **The Food Service establishment provides regular meal service at regularly available tables all hours of operation to guests for compensation.** The establishment must have kitchen facilities for keeping, cooking, and preparing foods for meals. [Note: It must state the restaurant with liquor sales must be open until at least 10:00 p.m.]

Definition of Restaurant

A.R.S. § 4-205.02.G.2. - "Restaurant" means **an establishment which derives at least forty per cent of its gross revenue from the sale of food**, including sales of food for consumption off the licensed premises if the amount of these sales included in the calculation of gross revenue from the sale of food does not exceed fifteen per cent of all gross revenue of the restaurant.

LUC art. VI, § 6.2.18 DEFINITIONS - Restaurant. A Food Service use. A restaurant by any other name, such as, but not limited to, coffee shop, cafeteria, fast food restaurant, or diner, shall be regulated as a restaurant. To differentiate between a restaurant which serves alcoholic beverages and a bar which serves food, **a restaurant meets the following criteria.** [Note: The definition must conform to State law regarding the amount of gross revenue derived from the sale of food]

- A. Provides meals suitable to hours of operation (i.e., breakfast in the morning, lunch in the afternoon, etc.).
- B. The full kitchen remains open and meals are available to patrons during all hours of operation with the exception of the last hour which is used for cleanup.
- C. Management cannot ask for age verification (carding) for admittance to the establishment.
- D. Management cannot restrict patronage by age or sex (i.e., Ladies Night, Over 21, etc.) except for limited special services or events within certain limited areas of the establishment.
- E. A cover charge cannot be required for general admittance, except for special services or events offered within certain areas of the establishment.
- F. Management must maintain a minimum amount of table seating at all times and not have tables removed to create a dance floor or set aside major sections of the establishment for special events.

Liquor Sales:

A.R.S. §4-203 B. - The license shall be to manufacture, sell or deal in spirituous liquors only at the place and in the manner provided in the license. A separate license shall be issued for each specific business, and each shall specify:

- 1. **The particular spirituous liquors which the licensee is authorized to manufacture, sell or deal in.**

LUC art. III, §3.5.4.7 D. and E. - Sale of Spirituous Liquor in Conjunction with Food Service Use.

D. The Food Service establishment **may serve, in addition to beer and wine, other alcoholic beverages.**

E. The Food Service establishment may serve alcoholic beverages, provided it is **limited to beer and wine only.** [Note: Both provisions need to be deleted because the liquor license issued by the State determines what type of liquor is sold/served]

Special Exception Process:

LUC art.II, §2.5.3.3 - **Special Exception Land Uses.** **The following Land Use Classes are not permitted within this zone, unless approved through the special approval procedure noted for the Land Use Class, and are subject to any additional conditions listed. ...**

A. **Commercial Services Use Group, Sec. 6.3.5**

- 1. **Alcoholic Beverage Service "28", as a Secondary Land Use to Food Service, subject to: Sec. 3.5.4.7.A, .B, .D, .F, .G, .H, .I, and .J; Sec. 3.5.4.19.C; and approval through a Zoning Examiner Full Notice Procedure, Sec. 23A-50 and 23A-53.** [Note: The Special Exception required for restaurants serving beer, wine and other types of alcoholic beverages needs to be deleted because the liquor license issued by the State determines the type of alcohol sold/served by an establishment]

Conclusion: By forwarding the amendment with a recommendation to adopt the draft ordinance, the Mayor and Council will not have to hear special exceptions for restaurants serving other alcoholic beverages in addition to beer and wine. In addition, the *LUC* will no longer be in conflict with the State statutes regarding the type of liquor sold in restaurants, the definition of

restaurant and the hours in which food is served. The other *LUC* provisions differentiating restaurants selling liquor from bars will remain in place.

Attachments:

Attachment A - Proposed Amendments

Attachment B – Administrative Action Report summary

A.R.S §4-224